

RECEIVED
CENTRAL FAX CENTER

REMARKS/ARGUMENTS

SEP 22 2006

In view of the foregoing amendments and the following remarks, the applicants respectfully submit that the pending claims comply with 35 U.S.C. § 101, are not anticipated under 35 U.S.C. § 102 and are not rendered obvious under 35 U.S.C. § 103. Accordingly, it is believed that this application is in condition for allowance. If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicants respectfully request that the Examiner contact the undersigned to schedule a telephone Examiner Interview before any further actions on the merits.

The applicants will now address each of the issues raised in the outstanding Office Action.

Objections

Claims 10, 11, 14 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Since claims 10 and 29 have been rewritten in independent form to include the recitations of base claims 1 and 26, respectively, these claims are now in condition for allowance. Since claim 11 depends from claim 10, it is similarly in condition for allowance.

Since claim 14 indirectly depends from claim 12 which is in condition for allowance for reasons discussed below, claim 14 is also in condition for allowance.

Rejections under 35 U.S.C. § 101

Claims 34-35 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. These claims have been amended to recite that they are directed to data structures stored on a "computer-readable" medium, rather than on a "machine-readable medium".

Further, as was the case in In re. Lowry, 32 U.S.P.Q.2d 1031 (Fed. Cir. 1994), claims 34 and 35 are more than a mere abstraction -- the claimed data structures are specific structural elements in memory. Further, they provide tangible benefits. Specifically, they help control the sampling of addressed data, and identify a next hop destination of the samples, as well as state information. The data structures are clearly limited to a practical application. Thus, these claims are functional material recorded on a computer-readable medium. The Patent Office has recently instructed:

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.

"Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility", OG Notices: 22 November 2005, Annex IV.

In view of the foregoing, claims 34 and 35 are clearly statutory. Consequently, the applicants respectfully request that the Examiner withdraw this ground of rejection.

Rejections under 35 U.S.C. § 102

Claims 1, 3, 4, 16-19, 25, 26 and 36-48 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,035,202 ("the Callon patent"). Since these claims have been canceled, this ground of rejection is rendered moot.

Rejections under 35 U.S.C. § 103

Claims 2, 5-9, 20-24, 27, 28, 30, 31, 34 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Callon patent. The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

Even assuming arguendo, that one skilled in the art would have been motivated to modify the Callon patent as proposed by the Examiner, 35 U.S.C. § 103 (c) is applicable and the Callon patent, which is a reference under 35 U.S.C. § 102(e), cannot be used to preclude patentability. Specifically, 35 U.S.C. § 103 states:

Subject matter developed by another person, which qualifies as prior art

only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

In the instant case, the Callon patent and the present application were owned by, or subject to an obligation to assignment, to Juniper Networks, Inc. at the time of the present invention. Accordingly, these claims are not rendered obvious for at least this reason.

Further, claims 2, 5, 12, 15, 20, 22, 27, 30 and 31 have been rewritten in independent form to include the recitations of their respective base claims, and any intervening claims. Claim 5 has been amended to include features of claims 7 and 9 (canceled), and claim 8 has been amended to depend from claim 5. Claim 22 has been amended to include features of claim 24 (canceled). Finally, claim 27 has been amended to include features of claim 28 (canceled). Accordingly, all of these claims are now in condition for allowance.

Conclusion

In view of the foregoing amendments and remarks, the applicants respectfully submit that the pending claims are in condition for allowance. Accordingly, the applicants request that the Examiner pass this application to issue.

RECEIVED
CENTRAL FAX CENTER
SEP 22 2006

The applicants reserve the right to pursue the subject matter of any canceled or amended claims, such as through one or more continuation applications for example.

Respectfully submitted,

September 22, 2006

John C. Pokotylo
John C. Pokotylo, Attorney
Reg. No. 36,242
Tel.: (732) 542-9070

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper (and any accompanying paper(s)) is being facsimile transmitted to the United States Patent Office on the date shown below.

John C. Pokotylo

Type or print name of person signing certification

John C. Pokotylo
Signature

September 22, 2006

Date